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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,226	06/23/2006	Walter Blum	RO4265US (#90568)	9147
28672 7590 12/03/2008 D. PETER HOCHBERG CO. L.P.A. 1940 EAST 6TH STREET CLEVELAND, OH 44114			EXAMINER NORDMEYER, PATRICIA L	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/03/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/584,226	<b>Applicant(s)</b> BLUM ET AL.	
	<b>Examiner</b> Patricia L. Nordmeyer	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Withdrawn Rejections***

1. Any rejections and or objections, made in the previous Office Action, and not repeated below, are hereby withdrawn due to Applicant's amendments and arguments in the response dated October 8, 2008.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 4, 6 – 11 and 14 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plamthottam et al. (WO 89/00106) in view of Valdez (USPGPub 2004/0219356 A1).

Plamthottam et al. discloses a self-adhesive, flexible sealing tape (Abstract) comprising at least one flexible, self-adhesive core/carrier layer (Page 3, lines 11 - 15) provided with an envelope/two-sided coating comprising a second adhesive system (Page 3, lines 17 - 20), wherein the envelope/coating of comprises an expanded pressure-sensitive adhesive tape (Page 3, lines 17 – 20; Page 6, lines 18 - 22), and that the material for the core/the carrier layer is selected from the group comprising thermoplastic rubbers on the basis of styrene-isoprene-

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styrene block copolymers, styrene-butadiene-styrene block copolymers, copolymers of vinyl acetate and acrylates (Page 10, lines 4 - 35) that is thermally cross-linked (Page 11, lines 31 - 35) as in claim 1. With regard to claim 2, the material for the core/the carrier layer has a glass transition temperature ( $T_g$ ) of below 0 °C (Page 10, lines 11 - 15). As in claim 3, the pressure-sensitive adhesive tape is based on a pure dispersion acrylate (Page 30, lines 10 - 20; Page 37, lines 25 - 29). Regarding claim 4, the pure dispersion acrylate is based on plasticizing monomers selected from the group consisting of 2-ethylhexyl acrylate, 1-butyl acrylate and n-butyl acrylate (Page 30, lines 10 - 20; Page 37, lines 25 - 29). With regard to claim 6, the thickness of the core/the carrier layer is between 0.1 mm and 8 mm (Page 9, lines 10 - 12). As in claims 7 and 15, the width of the core/the carrier layer is between 1 mm and 10 mm (Page 9, lines 10 - 12). Regarding claims 8 and 16, the thickness of the envelope/coating is between 0.2 and 1.5 mm (Page 9, lines 12 - 14). However, Plamthottam et al. fails to disclose the envelope/two-sided coating completely surrounding at least one carrier/core layer, the envelope/coating has a foam-like structure, the sealing tape is equipped with reinforcing elements which stabilize the sealing tape in the longitudinal direction, the reinforcing element is selected from the group consisting of threads, nonwovens or interlaid scrims, wovens, knitted fabrics and crocheted fabrics and the tape is used for adhesively bonding vapour barrier films or vapour retarder films, by adhesively bonding said films to walls.

Valdez teaches disclose an adhesive tape (Abstract) the envelope/coating has a foam-like structure (Page 4, Paragraph 0045), the sealing tape is equipped with reinforcing elements which stabilize the sealing tape in the longitudinal direction (Page 4, Paragraph 0049) and the

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reinforcing element is selected from the group consisting of threads, nonwovens and wovens (Page 4, Paragraph 0049) for the purpose of forming a tape that can withstand humidity and extreme temperatures without suffering from disintegration (Page 1, Paragraph 0014).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the foam tape with the stabilizing structure in Plamthottam et al. in order to form a tape that can withstand humidity and extreme temperatures without suffering from disintegration as taught by Valdez.

With regard to the limitation “the tape is used for adhesively bonding vapour barrier films or vapour retarder films, by adhesively bonding said films to walls”, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regard to the limitation “the envelope/two-sided coating completely surrounding at least one carrier/core layer”, Plamthottam et al. discloses that the layers of the adhesive tape are extruded together to form the tape. It would have been obvious to one of ordinary skill in the art to change the shape of the layers to surround the core since it requires only a change in shape. MPEP 2144.04.

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4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plamthottam et al. (WO 89/00106) in view of Valdez (USPGPub 2004/0219356 A1) as applied to claims 1 – 4, 6 – 11 and 14 – 16 above, and further in view of Peltier (USPN 3,297,846).

Plamthottam et al., as modified with Valdez, disclose the claimed invention except for the pressure-sensitive adhesive tape comprises an adhesive based on a material selected from the group consisting of vinyl isobutyl ether and isobutene.

Peltier teaches a self-adhesive, flexible sealing tape (Figure 2) comprising at least one flexible, self-adhesive core or at least one flexible, self-adhesive carrier layer (Figure 2, #12) provided with an envelope or two-sided coating comprising a second adhesive system (Figure 2, #18 and 14), wherein the envelope/coating of comprises an expanded pressure-sensitive adhesive tape (Column 3, lines 61 – 70), wherein the pressure-sensitive adhesive tape comprises an adhesive based on a material selected from the group consisting of vinyl isobutyl ether and isobutene (Column 3, lines 62 – 65) for the purpose of attaching the tape to a surface (Column 3, lines 64 – 66).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the adhesive in the modified Plamthottam et al. in order to attach the tape to a surface as taught by Peltier.

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***Response to Arguments***

5. Applicant's arguments with respect to claims 1 – 11 and 14 – 16 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's argument with regard to the core of the tape being adhesive, please see the newly presented rejections above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571)272-1496. The examiner can normally be reached on Mon.-Thurs. from 10:00-7:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena L. Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patricia L. Nordmeyer  
Primary Examiner  
Art Unit 1794

/Patricia L. Nordmeyer/  
Primary Examiner, Art Unit 1794